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UNITED BEHAVIORAL HEALTH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID AND NATASHA WIT, et al.,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,

Defendant.

Case No. 3:14-CV-02346-JCS

Action Filed: May 21, 2014

**DECLARATION OF ADAM EASTERDAY
IN SUPPORT OF UBH'S MOTION TO
FILE UNDER SEAL TRIAL EXHIBIT
NUMBERS 715, 772, 777, AND 812**

Trial Date: October 16, 2017
Judge: Hon. Joseph Spero
Courtroom: G

1 GARY ALEXANDER, et al.,

2 Plaintiffs,

3 v.

4 UNITED BEHAVIORAL HEALTH,

5 Defendant.

Case No. 3:14-CV-05337-JCS

Action Filed: December 4, 2014

1 I, Adam Easterday, declare and state as follows:

2 1. I am employed by United Behavioral Health ("UBH"), and have worked at UBH
3 since 2005. I am a Deputy General Counsel for UBH. I have personal knowledge of the facts
4 stated herein, and if called as a witness, could and would testify competently thereto.

5 2. I became Deputy General Counsel at UBH in February 2013. Prior to February
6 2013, I was a Senior Associate General Counsel. Throughout my employment at UBH, I have
7 served as an in-house attorney.

8 **UBH's Per-Member Per-Month Rates**

9 3. My work requires me to be familiar with UBH's finances. This includes a broad
10 variety of data, but UBH's most sensitive and confidential financial information are the per-
11 member, per-month ("PMPM") rates UBH charges its customers. These rates are used for many
12 purposes, primarily in negotiating pricing with customers. For this reason, UBH considers this
13 particular information to be highly sensitive. It is UBH's practice to keep such information
14 confidential and not to disclose it. Few individuals within UBH have access to this information.

15 4. There are many ways to calculate the PMPM rate, which is essentially the ratio of
16 costs (administrative costs, or administrative and insurance, depending on the plan) and the
17 number of Plan members, calculated as a monthly average. For example, if a particular market
18 contains 1,000,000 members, and UBH spent \$100,000 in an average month to provide services,
19 then the PMPM rate would be \$0.10. Similarly, if the penetration rate (i.e. the percentage of
20 members who use a service) is 1% and the monthly cost for services is \$1,000, then the PMPM
21 will be \$10. These are the simplest ways to calculate PMPM rate, however there are others.

22 5. The price that UBH's customers pay for their health plan is a PMPM rate.
23 Generally these rates are negotiated for a three-year term, so rates that were in effect in 2014 are
24 typically still in effect in 2017, and often form the basis for rate negotiations for the next three-
25 year cycle. PMPM rates are highly competitive, and most customers have a negotiated rate. UBH
26 keeps its negotiated PMPM rates confidential and often requires confidentiality clauses with its
27 customers to keep its rates confidential.
28

6. If the actual PMPM rates that UBH pays in order to provide services are allowed to enter the public domain, then there is a substantial risk that UBH will suffer serious competitive harm. For example, if a competitor of UBH's were to obtain this information, the competitor could use the information to market to UBH's customers or potential customers by using UBH's rates to undercut UBH. Further, UBH's customers or potential customers could use UBH's rates in negotiations to UBH's disadvantage. For this reason, PMPM rates are kept as some of the most closely guarded and proprietary information throughout the insurance industry.

7. Trial Exhibit 715 reflects UBH's PMPM rate information from 2014-2017 on page 1. Although this document only has the annual PMPM trend, this information could be used, when combined with UBH's actual 2013 PMPM rates to easily calculate UBH's current PMPM rates. I understand that UBH is not seeking to seal financial data, even actual PMPM rates, from 2013 and before, so the 2013 PMPM rates may be introduced. Further, this exhibit contains other information that can be used, when combined with other data that UBH is not seeking to seal individually, to generate UBH's 2014-2017 PMPM rates. Attached to this declaration as Exhibit 715-R is a redacted copy of Trial Exhibit 715.

8. Trial Exhibit 772 is UBH's monthly Business Review from July, 2014. This document reflects UBH's PMPM rate information from 2014 on page 10 and 61-92. Pages 10-13 have information that could be used to calculate UBH's PMPM rates like UBH's total membership and revenue which, if combined, would allow a UBH competitor to arrive at UBH's overall PMPM rates. Attached to this declaration as Exhibit 772-R is a redacted copy of Trial Exhibit 772.

9. Trial Exhibit 777 is an email that contains a discussion between individuals in UBH's financial department about the expansion to TMS. In particular, on Page 2 and 3, they were asked to calculate the potential PMPM rate impact for the decision to adopt TMS as a new covered service in order to determine the appropriate price to charge UBH's customers. Thus, this data reflects a portion of the customer's PMPM rate and could be used by a UBH competitor to undercut UBH's PMPM rate with regards to this service. Also, this data could be used by a

1 provider of this service during price negotiations over the cost for the service. Attached to this
 2 declaration as Exhibit 777-R is a redacted copy of Trial Exhibit 777.

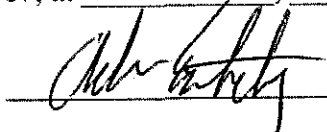
3 **UBH's Privileged Documents**

4 10. In my work for UBH, I provide legal advice to individuals within UBH. In or
 5 around early 2016, UBH was in the process of responding to multiple inquiries from various
 6 states' regulatory agency relating to the Coverage Determination Guideline for Applied Behavior
 7 Analysis ("ABA"). In particular, many states requested descriptions of how this guideline
 8 complied with state ABA mandates and federal parity requirements. I was involved with this
 9 process from an early stage and provided legal advice about the legal implications of potential
 10 responses.

11 11. On May 19, 2016, I attended a meeting with various people, including Michael
 12 Bresolin and Erik Rockswold, where I was asked as Deputy General Counsel to provided legal
 13 advice about UBH's obligations relating to the ABA Coverage Determination Guideline under
 14 state and federal law.

15 12. Trial Exhibit Number 812 is an email that continues the discussion from the
 16 privileged May 19, 2016 meeting in which I participated. The legal advice that I provided is
 17 reflected in the entire email, including the entire decision-making process that resulted from these
 18 discussions. For example, in one portion of the document (on Ex. 812-0002 and 03) I ask for
 19 more information in order to provide further legal advice. Ms. Temple's response to my email
 20 (on Ex. 812-0001) reflects her reaction to my legal advice and my questions that were made for
 21 the purpose of gathering information to render further legal advice. This response also constitutes
 22 a request for legal advice, as she asks for a full report on this issue, which primarily includes a
 23 legal analysis.

24
 25 Executed this 17th day of October, 2017, at Lake Oswego, Oregon.

26 
 27 _____

28 Adam Easterday